IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1284 OF 2003

Nandkumar & Co.Construction,.. .. Petitioner
Vs
1.Pune Municipal Corporation
Pune and ors. .. Respondents

Mr M.S.Lagu, for the petitioner.
Mr V.G.Peshave, for respondent nos 3 & 4.

CORAM : D.B.BHOSALE,J.
DATE : 04.10.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Rule returnable forthwith. Mr Peshve, learned counsel, waives service for respondent nos.3 & 4. By consent, rule is heard finally.

3. By this writ petition, the petitioner has impugned the order dated 8.3.2002, by which the application at Exhibit-36 under Order 6, Rule 17 of CPC, has been rejected. I perused the order and in particular paragraph 14 thereof. The learned Judge, after considering the overall facts and circumstances of the case, has recorded a categoric finding that the amendment would be necessary to determine the real question in controversy and it deserves to be allowed on

that ground. However, he proceeded to reject the application holding that such amendment cannot be allowed only to avoid multiplicity of the proceedings and that there was long delay in seeking the amendment.

4. The submission of Mr Peshave, learned counsel for the respondents, is two-fold. Firstly, he wanted me to examine the merits of the amendment sought by the petitioner, stating that it has been rightly rejected, and secondly, on the ground of limitation. The law is well settled and the Supreme Court has reiterated in Rajesh Kumar Aggarwal and Ors vs K.K.Mody & ors, (2006) 4 CC 385 stating that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. Similarly, in Pankaj and Anr Vs. Yellapa (Dead) by LRs and ors, (2004) 6 SCC 415, the Supreme Court has observed that an application for amendment of the pleadings cannot be disallowed merely because it is opposed on the ground that the same is barred by limitation. It is further observed that a plea of

limitation being disputed could be made subject matter of the issue after allowing the amendment prayed for. Keeping that in view and considering the observations made by the learned Judge in the impugned order and in particular paragraphs 13 and 14 thereof, in my opinion, the impugned order deserves to be set aside. Hence, I pass the following order:

(a) The order dated 8.8.2002 passed on the application at Exhibit-36 is quashed and set aside. The application Exhibit-36 is allowed. The petitioner to carry out the amendment within two weeks from the date of receipt of this order. Liberty to the respondents to file additional written statement, if they so desire, within a period of four weeks from the date of carrying out the amendment by the petitioner-plaintiff. Rule is, accordingly, disposed of.

(D.B.BHOSALE,J.)